

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CHRISTOPHER PARY,

Plaintiff,

v.

TERESA NEHLS, PENNY PERRY and
DR. R. GUPTA,

Defendants.

ORDER

17-cv-37-bbc

Pro se plaintiff Christopher Pary is proceeding on a claim under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1974), relating to allegations that health care providers at the Federal Correctional Institution in Oxford, Wisconsin failed to provide him adequate medical care for rectal bleeding, in violation of the Eighth Amendment. Defendants have moved to compel discovery. Dkt. #119. However, in lieu of a response to that motion, which was due July 16, 2018, plaintiff filed a motion to stay his case until January 2021 when he will be out of prison and better able to obtain legal representation and prosecute his claims. Dkt. #124.

Plaintiff's motion will be denied. Allowing this case to remain open but inactive for almost three years is not feasible and would be prejudicial to defendants. If plaintiff does not wish to pursue his case at this time, he may file a motion for voluntary dismissal. However, when a motion for dismissal is filed after a defendant has filed an answer, as in this case, Fed.

R. Civ. P. 41(a)(2) provides that the action may be dismissed by the plaintiff “only upon order of the court and upon such terms and conditions as the court deems proper.” When the defendants have been required to defend the action, the dismissal usually is “with prejudice,” which means that plaintiff would be barred from bringing the claim in his current case in any future action, unless defendants agree to a dismissal without prejudice. Plaintiff may have until July 31, 2018 to advise defendants and the court whether he seeks to dismiss his case with or without prejudice, and defendants shall have until August 7, 2018 to respond.

ORDER

IT IS ORDERED that plaintiff Christopher Pary’s motion for a stay, dkt. #124, is DENIED. Plaintiff shall have until July 31, 2018, in which to advise defendants and the court whether he is requesting voluntary dismissal of this action with or without prejudice. Defendants shall have until August 7, 2018 to respond. Briefing on defendant’s motion to compel, dkt. #119, is STAYED pending resolution of plaintiff’s response.

Entered this 17th day of July, 2018.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge